

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY



(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 02 AUG 2005

WIPO

PCT

Applicant's or agent's file reference PPD70294WO		FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/GB2004/002453		International filing date (day/month/year) 09.06.2004	Priority date (day/month/year) 10.07.2003	
International Patent Classification (IPC) or national classification and IPC C12N15/82				
Applicant SYNGENTA LIMITED et al.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 21.01.2005		Date of completion of this report 01.08.2005		
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Loubradou, G Telephone No. +49 89 2399- 8543 		

Best Available Copy

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/002453

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-34 as originally filed

Sequence listings part of the description, Pages

1 as originally filed

Claims, Numbers

1-7 as originally filed

Drawings, Sheets

1/1 as originally filed

☒ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/002453

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2-7
	No: Claims	1
Inventive step (IS)	Yes: Claims	
	No: Claims	1-7
Industrial applicability (IA)	Yes: Claims	1-7
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/002453

Supplemental Box relating to Sequence Listing

Continuation of Box I, item 2:

1. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this report has been established on the basis of:

a. type of material:

- ☒ a sequence listing
- ☐ table(s) related to the sequence listing

b. format of material:

- ☒ in written format
- ☒ in computer readable form

c. time of filing/furnishing:

- ☒ contained in the international application as filed
- ☐ filed together with the international application in computer readable form
- ☒ furnished subsequently to this Authority for the purposes of search and/or examination
- ☒ received by this Authority as an amendment on

2. ☒ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

3. Additional observations, if necessary:

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

D1: US-B-6 384 3041 (QUANDT JUERGEN ET AL) 7 May 2002 (2002-05-07)

D2: WO 02/072804 A (BAYER CROPS SCIENCE N V ; PUEHLER ALFRED (DE)) 19 September 2002 (2002-09-19)

- 1.1 D1 discloses methods for conditional cells ablation in plants, the preferred embodiment being the generation of male or female sterile plants (see D1, page 8 lines 9 to 19). In an embodiment, plants are generated which carry both a gene conferring resistance to PPT *via* the conversion of PPT to N-acetyl PTT (for example the *pat* or *bar* genes) and a gene encoding a deacetylase able to convert N-acetyl PTT back to PPT which is expressed in target cells or tissues (see D1 page 9 lines 19 to 31).

Therefore, D1 anticipates claim 1 (Article 33(2) PCT).

- 1.2 D2 discloses methods of producing conditional male sterile wheat (see D2 the abstract). In an embodiment plants are generated which carry both a gene conferring resistance to PPT *via* the conversion of PPT to N-acetyl PTT (for example the *pat* or *bar* genes) and a gene encoding a deacetylase able to convert N-acetyl PTT back to PPT which is expressed in target cells or tissues (see D2 column 7 line 59 to column 8 line 6).

Therefore, D2 anticipates claim 1 (Article 33(2) PCT)

2. Dependent claims 2 to 7 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, see D1 and D2 and the corresponding passages cited in the search report (Article 33(2)(3) PCT).